
UTAH LABOR COMMISSION

ROBERT J. TROISE,

Petitioner,

vs.

MCDONALDS,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 8-08-0095

Robert J. Troise asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's summary dismissal of his charge of discrimination alleging that McDonalds discriminated against him in violation of the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commission exercises jurisdiction in this matter pursuant to Utah Code Annotated § 63G-4-301 and § 34A-5-107(11).

PROCEDURAL BACKGROUND AND ISSUE PRESENTED

Mr. Troise filed a charge of discrimination with the Utah Antidiscrimination and Labor Division ("UALD") on November 30, 2007. In his charge, Mr. Troise alleges that McDonalds subjected him to discrimination when he was denied hire because of his race (white), national origin (Italian), gender (male), and age, and in retaliation for his filing a previous charge against McDonalds (Case No. 8-08-0020). After conducting an investigation, UALD dismissed Mr. Troise's charge. Mr. Troise appealed UALD's decision and requested an evidentiary hearing with the Adjudication Division.

During the discovery period, Mr. Troise attempted to obtain documents from McDonalds through a subpoena request, which Judge La Jeunesse denied because Mr. Troise failed to first obtain the evidence through normal discovery procedures, and because the request for documents was vague and overly broad. Based on admissions made during discovery, McDonald's filed a motion for summary judgment to dismiss Mr. Troise's claim. Judge La Jeunesse granted the motion and dismissed Mr. Troise's claim. In his motion for review, Mr. Troise requests review of Judge La Jeunesse's decision to dismiss his claim and denial of his subpoena request.

FINDINGS OF FACT FOR PURPOSES OF SUMMARY JUDGMENT

In considering whether summary judgment was appropriate in this case, the Commission must view the disputed facts in the light most favorable to Mr. Troise. When viewed in that light, the facts relevant to the motion for review are as follows:

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On September 2, 2007, Mr. Troise first applied for a supervisory position at McDonalds located at 4217 South Redwood Road. On October 9, 2007, after not being selected for hire, Mr. Troise filed a charge of discrimination at UALD (Case No. 8-08-0020).¹

On or about October 19, 2007, Mr. Troise applied for another supervisory position at the McDonalds located in the Walmart at 5569 Redwood Road. Mr. Troise claims he left his application with an assistant manager, who was impressed with Mr. Troise's available hours and said he would have the store manager review it. However, after not hearing back, Mr. Troise filed the present charge of discrimination on November 30, 2007, alleging discrimination based on his race, national origin, gender, and age, as well as retaliation for filing his previous charge of discrimination. In his deposition, Mr. Troise admitted he did not know if anyone was hired as a supervisor over the Walmart McDonalds instead of him, nor has he presented any evidence to support this contention. He further admitted that he did not know of any facts that would show the reason he was not hired at this location was because of his race, national origin, gender or age, or in retaliation to his previous charge of discrimination.

McDonalds' supervisors oversee the store managers of several McDonalds' stores. McDonalds' practice of hiring for these positions is to select candidates who have worked for McDonalds for 7 to 8 years as general staff and store managers. Mr. Troise asserts his previous food service experience included helping out occasionally at the food service counter at Target when he was an employee, and assisting the Salvation Army serving food on weekends.

DISCUSSION AND CONCLUSION OF LAW

Rule 56(c) of the Utah Rules of Civil Procedures, in accord with § 63G-4-102 of the Utah Administrative Procedures Act, provides that summary judgment is appropriate:

... if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In filing a charge of discrimination, Mr. Troise has the burden of proving that McDonalds subjected him to discrimination based on his protected classes or subjected him to retaliation. To do this, he must first establish the necessary prima facie elements to each of his claims. Once he has established a prima facie case, the burden then is placed on the employer to prove a legitimate non-discriminatory reason for its employment actions. Once this burden has been met, the burden shifts back to the employee to prove that the employer's reason is just a pretext for discrimination. Thus, the Commission first reviews whether Mr. Troise has met his burden of establishing a prima facie case of discrimination and retaliation, finding all disputed facts in his favor.

¹ The Commission notes that this case was similarly dismissed after a motion for summary judgment, a decision of which, on motion for review, the Commission has also affirmed.

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Claim of discrimination based on race, national origin, gender and age. In order to establish a prima facie case of discrimination based on race, national origin, gender or age, Mr. Troise must establish the following elements: (1) he is a member of a protected class; (2) he was qualified for the position that he sought; (3) he was subject to an adverse employment action (i.e., not hired); and (4) someone outside of his protected class was selected instead. During his deposition, Mr. Troise admitted that he did not know of any other person who was hired instead of him for the supervisory position at the McDonalds' Walmart location, nor does he have any evidence to support such a contention. Mr. Troise further conceded that, based on McDonald's required prerequisites for a supervisor, which he does not dispute, he would not have been qualified for that position. Thus, Mr. Troise cannot establish two of the four elements necessary to establishing a prima facie case of discrimination based on his race, national origin, gender, or age. The Commission therefore affirms Judge La Jeunesse's dismissal of these claims.

Claim of retaliation. In order to establish a prima facie case of retaliation, Mr. Troise must prove that: (1) he engaged in protected activity; (2) he was subject to an adverse employment action, i.e., denied hire; (3) and the reason he was denied hire was because he engaged in protected activity. In this matter, there is no dispute that Mr. Troise satisfied the first two elements. For the last element, the Commission turns to Mr. Troise's admissions during his depositions. Although he conceded that he knew of no facts to support his claim, he did maintain that when he left his application with the assistant manager, he believed he had impressed the employee and was going to be given an opportunity to talk with someone about his application. He claims it was only after McDonalds became aware he filed his first charge of discrimination with the UALD that it decided to decline his application. For purposes of summary judgment, the Commission finds this assertion as true and thus finds that Mr. Troise established a prima facie case for retaliation.

Under the burden shifting framework described above, the burden then is on McDonalds to provide a legitimate non-discriminatory reason for its actions. McDonalds has asserted that Mr. Troise was not selected for the supervisor position he applied for based on several reasons: his application was incomplete (not signed) and illegible; no supervisory position was open or available, nor was anyone hired for a supervisory position; Mr. Troise did not have the qualifications for a supervisor, which usually requires 7 to 8 years experience as a McDonalds' crew member and manager; and that McDonalds' hiring personnel, including the store manager at the Walmart McDonalds where he applied, were not aware of his pending charge of discrimination at the time his application was submitted for employment. Mr. Troise has not provided any evidence or asserted any facts to dispute these claims. For the these reasons the Commission finds that McDonalds met its burden of articulating a legitimate non-discriminatory reason for its decision not to hire Mr. Troise, which Mr. Troise failed to prove was only pretext for discrimination. Thus, the Commission affirms Judge La Jeunesse's dismissal of his claim for retaliation.

The Commission notes Mr. Troise's objection to Judge La Jeunesse's denial of his subpoena requests. The Commission has reviewed the subpoena request, which essentially was a blanket request for all applications and personnel records on age, race, sex, and national origin without any

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further specificity, and concurs with Judge La Jeunesse's decision to deny Mr. Troise's request.

In summary, the Commission has reviewed the record, including Mr. Troise's admissions during his deposition, and finds that Mr. Troise failed to establish that McDonald's discriminated against him based on his race, national origin, gender, age, or for retaliation. For these reasons, the Commission affirms Judge La Jeunesse's summary dismissal of his charge of discrimination.

ORDER

The Commission affirms Judge La Jeunesse's decision to dismiss this case. It is so ordered.

Dated this 29th day of January, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.